IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

S. B. CRIMINAL MISC. PETITION NO. 753/1998

Shah Rukh Khan
V
The State of Rajasthan & Ors.

Date of Judgment: 20th August, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Maneesh Sharma, for the Petitioner
Mr. B. K. Sharma, Public Prosecutor for the State
Mr. Lokesh Sharma, for the Respondents Nos. 2 to 7.

(Per Court):

REPORTABLE

A dialogue spoken in a courtroom scene of the movie *Ram Jaane* has, ironically, brought its protagonist, Shah Rukh Khan, a popular Bollywood thespian, as a Petitioner to this Court. The Petitioner has challenged the order, dated 28-1-1998, passed by the Additional Chief Judicial Magistrate No. 1, Kota, whereby the learned Magistrate had rejected the Petitioner's application, filed under Section 245 (2) of the Criminal Procedure Code ('the Code', for short), for discharge from the criminal offences allegedly committed by him.

In a nutshell, the facts of the case are that, in 1996, under the direction of Mr. Rajiv Mehra, a Hindi film *Ram Jaane* was released for public viewing after due certification by the Central Board of Certification ('the Board', for short). The Petitioner played the role of the protagonist in the film. In the later part of the film, the hero is tried for triple murders. In the courtroom scene, the defense lawyer gets up to defend the hero who is, however, bent upon confessing his crime. He, therefore, questions the conduct of the lawyer and says:

> यह वकील अच्छी तरह से जानता है कि अपुन उन तीन लोगों को मारा है लेकिन फिर भी अपुन को कोशिश करता है। काहे को। है।
> पैसे का खातिर नहीं।
> पैसे की खातिर ये अपना ईमान बेचता है।
> कानून बेचता है। ऐ ऐ ऐ कानून बेच बेच के तुम लोग जिन्दगी को सजा बना डाला है रे।
>
> (This lawyer well knows that I have killed the three persons, yet he tries to save me. Why? For the sake of money, no? For the sake of money, he sells his morals. He sells the laws. By selling the laws, you people have turned life into a misery.) (English translation of the Hindi dialogue)

According to the respondents Nos. 2 to 7, the said movie was released in Kota as well. When they went to see the movie, they found the above-noted dialogue as defamatory against the community of lawyers practicing in India. They claim that because of the said dialogue, the respondents were subjected to ridicule and anger from those who were sitting in the movie theater. They also allege that their neighbours ridiculed them as well. Hence, the respondents Nos. 2 to 7 filed a criminal complaint against Mr. Shah Rukh Khan (the Petitioner), Mr. Rajiv Mehra (the director), Mr. Pravesh Mehra (the producer), Mr. ShriKant Sharma (the co-scriptwriter), Ms. Juhi Chawla (the heroine), and M/s Vinayak Film Industries (the distributors in Rajasthan), and M/s Unkown Distributors (distributors for India) alleging defamation and criminal conspiracy, offences under Sections 500, 501 and 120-B of the Indian Penal Code ('IPC', for short), before the Additional Chief Judicial Magistrate, No. 1, Kota. On 20-1-1996, the learned Magistrate recorded the statements of the Complainants under Section 200 of the Code. Vide his order dated 22-1-1996, the learned Magistrate took cognizance of offences under the aforementioned provisions of

IPC. The Petitioner challenged the cognizance order before this Court, by filing a Miscellaneous Petition, registered as S. B. Criminal Misc. Petition No. 443/1996. However, vide order dated 2-5-1997, this Court, while disposing of the said petition, directed the Petitioner to file before the learned Magistrate, within a period of one month, an application, under Section 245 (2) of the Code, for discharging him. Since the said application could not be filed within the stipulated period, the said period was extended by another six months. Thereupon, on 13-4-1998, the petitioner filed the said application before the learned Magistrate. But, vide his order 29-4-1998, the learned Magistrate dismissed the said application. Hence, this petition before this Court.

Mr. Maneesh Sharma, the learned counsel for the Petitioner, has raised a number of contentions before this court:

Firstly, that the learned Magistrate has not appreciated the scope and ambit of Section 245 (2) of the Code. In deliberating whether to discharge the accused person, the learned court should have considered the existence of the

ingredients of the offence. In the present case, the learned Magistrate has ignored the fact that the essential ingredients of the offence of defamation are non-existent here. The offence of defamation, like any other, requires an element of intention. But in a dramatic situation, when an actor speaks out a dialogue according to the script and under a direction, the actor can not be said to be speaking in his own capacity. He is merely parroting an imaginary character.

Moreover, the learned trial court should have also examined if there were any legal bars or impediments, which created hurdles for the continuation of the trial. The learned court has failed to examine this aspect of the case, according to the learned counsel.

Secondly, although according to Section 499, Explanation (2) IPC, the offence of defamation can be committed against a company, or ‘a collection of persons’, such a ‘collection of persons’ has to be identifiable, specific, and definite. The offence cannot be committed against a class, the identity of whose members remains general and unspecific.

Thirdly, Section 199 of the Code deals with prosecution

for defamation. It imposes a bar on the power of the court to take cognizance except upon a complaint made by some person aggrieved by the offence. Section 199 (6) permits the person, against whom the offence is alleged to have been committed, to make a complaint in respect of that offence. But, the complainant has to show that he was the target of defamation. According to the learned counsel, such a complaint from a member of an indefinite class of persons is non-maintainable. In order to buttress his contention, the learned counsel has relied upon the case of G. Narasimhan & Ors v T. V. Chokkappa (1972) 2 Supreme Court Cases 680.

Fourthly, Section 79 IPC creates an exception in favor of the Petitioner. The learned Magistrate has failed to recognize the benefit of Section 79 IPC available to the Petitioner.

Fifthly, once the Board certifies the film for public viewing, the producer, the director, the actor, the actress, and others associated with the film are protected from prosecution under Section 5 A of the Cinematograph Act, 1952 (‘the Act of 1952’,

for short). In order to support this contention, the learned counsel has relied upon the case of Raj Kapoor v Laxman (AIR 1980 SC 605).

Sixthly, creative works like a film, a play, a book are the artist's prized speech and expression. Art. 19 (1) of the Constitution has always protected such speech and expression. Hence, what is sanctioned by the Constitution cannot be deemed an offence under the penal law.

Lastly, a similar complaint was filed in Ajmer. However, the learned trial court at Ajmer had dismissed the case. The continuation of criminal proceedings, thereafter, would be tantamount to an abuse of the process of the court.

On the other hand, Mr. Lokesh Sharma, the learned counsel for the Respondents Nos. 2 to 7, has raised the following contentions:

Firstly, while dealing with an application under Section 245 (2) of the Code, the learned trial court can not meticulously

examine the evidence to see if the accused person should be discharged or not.

Secondly, the dialogue spoken by the petitioner is per se defamatory in nature. It is a dialogue, which harms the reputation of the lawyers in the country. Thus, the essential ingredients of defamation, as defined in Section 499 IPC, do exist. Hence, the offence is punishable under Section 500 IPC.

Thirdly, it is not essential that defamation should be with regard to a particular individual; it can be against a class. Lawyers as a class are identifiable. Hence, the complaint is maintainable against the petitioner. To support this contention, the learned counsel has relied upon the case of Sahib Singh Mehra v State of U.P. (1965) 2 SCR 828.

Fourthly, at the initial stage of the trial, the benefit of Section 79 IPC cannot be given.

Fifthly, the protection under Section 5A of the Act of 1952

is available only for “obscenity” in a film, and not against an allegation of defamation. Moreover, the certificate issued by the Board is not conclusive. Hence, the certification does not protect the petitioner against prosecution. In order to support this contention, the learned counsel has relied upon the case of Raj Kapoor & Ors v State (Delhi Administration) & Ors, AIR 1980 SC 258.

Sixthly, the Fundamental Rights under Art. 19 (1) of the Constitution are not absolute. They can be restricted and have been restricted by Art. 19 (2) to (6) of the Constitution of India. Defamation is one of the grounds which circumscribe the Fundamental Rights under Art. 19 (1) of the Constitution of India. Hence, the protection of Art. 19 (1) (a) is unavailable to the petitioner.

Lastly, the criminal court is unconcerned with the constitutional protection as Criminal law and Constitutional law are two separate branches of law.

Mr. B. K. Sharma, the learned Public Prosecutor, has

echoed Mr. Lokesh Sharma's arguments.

This Court has heard the learned counsels for the parties, has examined the record of the case, has perused the impugned order and has gone through the script of the movie, *Ram Jaane*, which was placed by the counsel for the Petitioner.

This case raises such vital issues of Criminal and Constitutional law as the following: What is the scope and ambit of Section 245 (2) of the Code? What are the essential ingredients of defamation? Can a member of an indefinite class file a complaint for defamation? Can the benefit of Section 79 of IPC be given to an accused at the initial stage of the criminal proceeding? Is the protection of Section 5A of the Act of 1952 available to persons involved with the making of a movie in a case for defamation? Or, is the said protection available only in case of "obscenity" in the movie? Should the learned trial court have looked into the constitutional scheme to see if the act complained of is protected under the Constitution of India? Does Art. 19 (1) of the Constitution of India protect works of art

as well? What are the limits of that protection? What would be the consequence to the life of our democracy if works of art were left unprotected?

In order to understand the scope of Section 245 (2) of the Code, it is imperative to consider together the Sections 244 and 245 of the Code. Section 244 of the Code is as under:

Section 244: Evidence for Prosecution:

> 1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.
>
> 2) The Magistrate may, on the application of the prosecution, issue summons to any of its witnesses directing him to attend or to produce any document or other thing.

Section 245. When accused shall be discharged:

> 1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un-rebutted, would warrant his conviction, the Magistrate shall discharge him.
>
> 2) Nothing in this section shall be deemed to

> prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

An analysis of these provisions clearly reveals that when a warrant case is instituted otherwise than on a police report, the Magistrate shall first proceed to hear the prosecution and to take all such evidence to be produced by the prosecution. According to Section 245 (1), if, after taking such prosecution evidence, the Magistrate considers that no case is made out against the accused, he shall discharge the accused. But, the Magistrate should record reasons for such discharging. However, under Section 245 (2) even prior to recording the evidence of the prosecution, the accused may appear before the Magistrate and argue for his discharge. Under Section 245 (2) of the Code, if the Magistrate considers the charge to be groundless, he may discharge the accused.

The sub-section uses the word “considers”. The said word implies that the Magistrate must take into account the

contentions of the accused. Although at the initial stage the Magistrate cannot meticulously examine the evidence produced by the accused, the Magistrate should examine if the essential ingredients of the offence are made out, if the cognizance has been taken legally, if there is any legal impediment to the framing of charge, or to the continuation of the trial. Section 245 (2) is not only a mandatory provision, it also requires the Magistrate to apply his mind judiciously. The power under Section 245 (2) is a vast power, which, after examining the facts of the particular case and after determining the law applicable in the case, must be exercised very judiciously.

The power under Section 245 (2) of the Code is akin to the power of the Magistrate under Section 227 of the Code. It would, therefore, be useful here to consider the interpretation of Section 227 of the Code. In dealing with the ambit and scope of Sections 227 and 228 of the Code, in the case of Union of India v Prafulla Kumar Samal & Ano (1979) 3 SCC 4, the Apex Court observed thus:

> 1) The Judge, while considering the question of framing of charges under Section 227 of the Code, has

the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.

2) Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4) That in exercising his jurisdiction under Section 227 of the Code, the Judge, who under the present Code is a senior and experienced court, cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the

> total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case, and so on. This, however, does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting the trial.

The Hon'ble Supreme Court has expressed similar views in the case of Dilawar Balu Kurane v State of Maharashtra 2002 WLC (SC) (Cri) 182. Hence, while considering the issue of discharging the accused person, the learned trial court should determine whether a strong suspicion is created against the accused person or not. Secondly, it must examine if there are any legal infirmities or hindrances in framing the charge against the accused person. However, as will be discussed hereinafter, the learned Magistrate has failed to consider these aspects of the case while passing the impugned order. Hence, the learned Magistrate has failed to consider the scope and ambit of the jurisdiction vested under Section 245(2) of the Code.

Defamation has a long history in Common Law. In law, "every person is entitled to his good name and to the esteem in

which he is held by others, and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person or persons without lawful justification or excuse." (*Halsbury's Laws of England*, Vol. 28, Fourth Edition, p. 3). "A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to disparage him in his office, profession, calling, trade or business." (*Ibid*, 9) In England, defamation is covered both under the law of torts and the criminal law. In torts, it is divided into two categories: It is 'libel' if the statement is made or conveyed by written or printed words or in some other permanent form, published of and concerning the plaintiff to a person other than the plaintiff. It is "slander" if the statement is oral, or in some other transient form. Both in England and in India, defamation is also covered by the criminal law.

Section 499 of IPC defines "defamation" as under:

> "499. Defamation: Whoever, by words either spoken or intended to be read, or by signs or by

visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1. It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception – **Imputation of truth which public good requires to be made or published. –** It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception – **Public conduct of public servants. –** It is not defamation to express in good

faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and not further.

Third Exception – **Conduct of any person touching any public question**. – It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception – **Publication of reports of proceedings of Courts.** – It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation. – A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception – **Merits of case decided in Court or conduct of witnesses and others concerned. –** It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception – **Merits of public performance. –** It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such

performance, and no further.

Seventh Exception – **Censure passed in good faith by person having lawful authority over another**. – It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful conduct made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eight Exception – **Accusation preferred in good faith to authorised person. –** It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception – **Imputation made in good faith by person for protection of his or other's interests. –** It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception – **Caution intended for good of person to whom conveyed or for public good. –** it is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

The offence of defamation, thus, consists of three essential ingredients, namely, 1) making or publishing any

imputation concerning any person, 2) such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations and (3) the said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned. Therefore, the intention to cause harm is a *sine qua non* of the offence under Section 499 IPC.

According to the learned counsel for the Petitioner the element of intention is conspicuously missing from this case. There is force in this argument. For, when a person “acts as a character”, the actor is not portraying himself but is portraying an imaginary entity—the character of the story. Indeed, his speech, his expression, his body language—the entire expressive apparatus--is employed to conjure up the personality conceived by someone else. At that moment, the actor is not himself, but is another person. Hence, when he delivers a dialogue, he is not expressing his own thoughts, but of a character. Substituting for a fictional character, he utters

the dialogue required by the story. Obviously, in mimicking a fictional character, the actor's personal "intention" has no place. The testimony of John Keats, one of the greats among the Romantic poets, is so pertinent here. In defining the persona of a poet (and the actor's is no different), he wrote to Richard Woodhouse on October 27, 1818: "As to the poetical character itself . . . it has no 'self'—it is everything and nothing. . . . It has as much delight in conceiving an Iago as an Imogen." An actor, like a poet, is always assuming, and impersonating, others' lives. And it is only by abandoning his personal ego and intention, that he can successfully do so. An actor's skilful execution of a role represents his personal craft, not his personal opinion or intention.

In the act of impersonation, his intention is not to defame a class of persons, but to embody the vision of the author, to give life to an imagined situation in such a manner as to transport the audience to another level of existence. According to Bharat Muni, the author of *Bharat Natya Shastra*, the function of an actor is to capture the *"ras",* the essence of the moment, and to portray it in such a manner as to immerse the audience

into a specific emotion for the moment. The actor is but a conduit for carrying the preconceived emotion. Understood thus, drama can be viewed as a means of audience's liberation from their mundane existence. The same law of dramatics would be applicable to the film as well. For, film is nothing but drama transferred to celluloid. A film actor is a hired agent required to capture and to exhibit the essence of the moment. Hence, the element of "intention"--of *mens rea*--was certainly missing when the Petitioner delivered the dialogue mentioned above. Hence, too, the essential ingredient of defamation was conspicuously absent from the scene. The learned Magistrate has overlooked the aesthetic aspect of the case, the aspect which makes a film a film, or a work of art, art.

It is true that, according to Explanation No. (2) of Section 499 IPC, defamation is not restricted to an individual alone; it may also be committed against "a company or an association or collection of persons". However, the association or collection of persons should be definite and identifiable. As far back as 1858, in the case of Eastwood v Hollmes, 1 F & F 347 = (175 ER 758), Willie J. observed, "If a man wrote that all lawyers

were thieves, no particular lawyer could sue him unless there is something to point to the particular individual." Lord Atkins also expressed similar views in Knupffer v *London Express Newspaper* ((1944) AC 116).

The law in respect to the defamation of a class of persons, as enunciated by Salmond, is as follows:

> In every case where the plaintiff is not named the test whether the words used refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to. If the words can be regarded as capable of referring to the plaintiff, the jury will have to decide the question of fact--Do they lead reasonable people, who know him, to the conclusion that they do refer to him. The reason why a libel published of a large or indeterminate number of persons described by some general name generally fails to be actionable is the difficulty of establishing that the plaintiff was, in fact, included in the defamatory statements, for the habit of making unfounded generalizations is ingrained in ill educated or vulgar minds, or the words are occasionally intended to be facetious exaggeration. Thus no action would lie at the suit of anyone for saying that all mankind is vicious and depraved or even for alleging that all clergymen are hypocrites or all lawyers dishonest. For charges so general in their nature are merely vulgar generalization. (Salmond & Heuston *On the Law of Torts*, Twentieth Edition, 150).

Similarly, it has been observed in Halsbury's *Laws of*

England, that “a class of persons cannot be defamed as a class, nor can an individual be defamed by general reference to the class to which he belongs” (Vol. 28, p. 8).

In the case of G. Narasimhan & Ors (*supra*), it was argued before the Apex Court that the case of Knupffer (*supra*) dealt with tortious liability and that there is a difference between the English law and the Indian Law on class defamation under the criminal law--under Section 499, Explanation-(2) IPC. The Hon’ble Supreme Court rejected the said contention and observed, “It is true that where there is an express statutory provision, as in Section 499, Explanation (2), that the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England.” While dealing with Section 499, Explanation (2), Their Lordships further observed as follows:

> But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and

> therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. (Emphasis added)

Later in the judgment, the Apex Court clearly stated: "When, therefore, Explanation (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body." (Emphasis added)

In the case of Asha Parekh & Ors v The State of Bihar (1977 Cri. L. J. 21), the Hon'ble Patna High Court dealt with a case where a group of lawyers had filed a defamation case against the actors, the actress, the director, the producer, the scriptwriter, etc., of the movie *Nadan*. The case before this Court is, in fact, much similar to that one. In that case, the complainant alleged that one of the characters had played the role of an advocate and that there were defamatory statements made against the lawyers as a class. The Hon'ble Patna High

Court observed as under:

> The essence of the offence of defamation consists in calling that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiment is exposed. The words or visible representation, therefore, complained of must contain an imputation concerning some particular person or persons whose identity can be established. If they contain no reflection upon a particular individual or individuals, but equally apply to others although belonging to the same class, an action for defamation will not lie. Further, although the word 'person' in Section 499 of the Code includes a company or an association or a collection of persons as well as provided in explanation 2 of Section 499, but the class of person attributed to must be a small determinate body. Advocates as a class are incapable of being defamed. If any publication can be shown to refer specifically to particular individuals then alone an action for defamation may lie, not otherwise.

Thus, the law requires that the defamatory statement, in order to be actionable, be made against a definite and an identifiable group. However, lawyers taken as a class cannot be identified with any particular individual--indeterminate, indefinite, and unidentifiable as the members are: Firstly, the members of this class are too varied to be reduced to a few

traits. Theirs is not a homogenous class, but a heterogeneous one, made up of wonderfully different individuals. Secondly, they are spread over the length and the breadth of the land. Thirdly, the class is always in flux, ever changing, as new lawyers enter and old ones depart the profession. The entire members of the class are clearly unidentifiable and indeterminable. Moreover, it is not the case of the respondent No. 2 to 7, that the Petitioner said anything specific about the lawyers of Kota, who arguably would form a definite collection of persons. The remark made by the petitioner was applicable to the lawyers as a community. Thus, a group of lawyers could not file a complaint against the petitioner for offence under Sections 499 and 500 IPC. Therefore, the complaint is not even maintainable. This aspect, too, has escaped the notice of the learned Magistrate in passing the impugned order.

Of course, the learned counsel for the respondents Nos. 2 to 7 has relied on the case of Sahib Singh Mehra (*supra*) in order to argue that a group of lawyers can, indeed, file a complaint for the offence of defamation. But the said case is

clearly distinguishable from the present one on the basis of factual matrix. In the case of Sahib Singh Mehra, the publisher had published an article regarding the Public Prosecutors and Assistant Public Prosecutors working in Aligarh. Thus, the Hon'ble Supreme Court held that the Public Prosecutors of Aligarh formed a definite and identifiable group of persons. Hence, any one of them could file a complaint against the publisher of the defamatory article. However, in the present case the alleged statement has not been made specifically against the lawyers working in Kota. Since in the present case the statement has been made against the lawyers as a class, the case of Sahib Singh Mehra (supra) cannot be relied upon as his basis by the learned counsel for the respondents Nos. 2 to 7.

The requirement of the aggrieved person filing the complaint for defamation is equally reflected in the procedural law contained in the Code. Under Chapter XIV of the Code, dealing with "Conditions Requisite for Initiation of Proceedings", while Section 190 of the Code empowers the Magistrate to take

cognizance, Section 199 carves out an exception. Since the offence of defamation is less a crime against the State and more a crime against the individual, Section 199 of the Code places a bar on the power of the court to take cognizance except on a complaint made by the person aggrieved by the defamatory statement. The relevant portions of Section 199 of the Code are as follows:

> "Prosecution for Defamation : (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some persons aggrieved by the offence :
>
> Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in the public, some other person may, with the leave of the Court, make a complaint on his or her behalf.
>
> 2)…..
> 3)…..
> 4)…..
> 5)…..
>
> (6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to make cognizance of the offence upon such complaint.

According to sub-section (1), in case of ordinary persons the complaint should be made by the person aggrieved, but not necessarily the person defamed. According to sub-section (6) the person who has been defamed can also file a complaint. But in either case, the complainant has to show that the defamatory statement aggrieves him. As stated above, a person belonging to a class that is ill defined and indeterminate cannot file a complaint for defamation. In the present case, the complainants belong to a community of lawyers—a class, in itself, ill defined and indeterminate. Hence, the complaint is not maintainable under the provision of Section 199 of the Code, either. Hence, the Magistrate could not have taken the cognizance. Even if the Petitioner before the learned Magistrate did not argue it, the learned Magistrate could have considered the twin aspects of the maintainability of the complaint and the power to take cognizance in light of Section 199 of the Code. However, the learned Magistrate chose to ignore these two requirements of the law in dealing with the application under Section 245 (2) of the Code. The impugned order in the view of

this Court is clearly untenable.

The learned counsel for the Petitioner has invoked Section 5 A of the Act of 1952 to argue that once the Board certifies a film, the petitioner is protected from prosecution. Moreover, once the certificate is issued, the law justifies the petitioner's act. Hence, the protection of Section 79 of IPC is available to the Petitioner. On the other hand, the learned counsel for respondent Nos. 2 to 7 has argued that the said bar against prosecution is limited to "obscenity" contained in the movie. Therefore, the question of benefit of Section 79 of IPC cannot be given to the petitioner.

The Act of 1952 was enacted for the purpose of making provisions for the certification of cinematographic films for exhibition and for regulating exhibitions by means of cinematographs. Section 3 of the Act of 1952 empowers the Central Government to constitute the Board of Film Certification. Section 4 of the Act deals with the examination of film as under:

> 4. Examination of films. "(1) Any person desiring to

exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner,-

(i) Sanction the film for unrestricted public exhibition :[***]

[Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or]

(ii) sanction the film for public exhibition restricted to adults; or

(ii a) sanction the film for public exhibition restricted to members of any profession or any class of persons; having regard to the nature, content and theme of the film; or]

(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or]

(iv) refuse to sanction the film for public exhibition.

(2) No action under [the proviso to clause (i), clause (ii a), clause (iii) of clause (iv)] of sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.

Section 5A of the Act covers certification of film thus:

> 5A Certification of films. - [(1) If, after examining a film or having it examined in the prescribed manner, the Board considers that -
>
> (a) the film is suitable for unrestricted public exhibition or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (i) of sub-section (1) of Section 4, it shall grant to the person applying for a certificate in respect of the film a “U” certificate or, as the case may be, a “UA” certificate; or
>
> (b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an “A” certificate or, as the case may be, a “S” certificate,
>
> and cause the film to be so marked in the prescribed manner :
>
> Provided that the applicant for the certificate, any exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).]
>
> (2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the *Gazette of India*.
>
> (3) Subject to the other provisions contained in this Act, a certificate granted by the Board under

this section shall be valid throughout India for a period of ten years.

Section 5B of the Act prescribes the principles about certification of the films in the following words:

> 5B. Principles for guidance in certifying films – "(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of [the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.
>
> (2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may thinks fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition."

A straight perusal of these provisions reveals that, under Section 4, the Board may sanction a film under different categories: namely, unrestricted viewing, unrestricted when accompanied by adult, adult viewing, and viewing by a restricted class of people, or profession. Under the said provision, the Board may also refuse to sanction the film for public viewing. Since the Board may sanction a film for

unrestricted but accompanied by adult viewing, or only for adults viewing, Section 5 A extends a protective umbrella from prosecution for “obscenity” to distributor, or exhibitor or to any other person to whom the rights of the film have passed. Since the wordings of Section 5A of the Act are unambiguous, the protection of the said provision extends only to “obscenity”; the said protection does not extend to include the case of defamation. Therefore, the contention of the learned counsel for Petitioner that such a protection would extend to defamation is unacceptable.

However, the counsel’s contention that the benefit of Section 79 of IPC would have to be extended to the petitioner does hold water. Section 79 falls under Chapter IV of the IPC, dealing with General Defenses. Section 79 runs as follows:

> Act done by a person justified, or by mistake of fact believing himself justified by law—Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

What defines a criminal act has taxed the minds of

various jurists from Blackstone to Edwin Sutherland, and from Austin to John Gillin. The word ‘crime’ owes its origin to the Greek word *“krimos”*, which is synonymous with the Sanskrit word *“karma”,* both implying the notion of *a* social order. Hence, the word ‘crime is applied to the acts that go against social order and are deserving of serious condemnation. The essential elements of crime are that: firstly, it is an act of commission or of omission, which is considered harmful and prohibited by the State. Secondly, the transgression of such harmful acts is prevented by a threat, or sanction, of punishment by the State. Thirdly, the guilt of the accused is determined after the accusation has been investigated in legal proceedings of a special kind, and in accordance with the provisions of the law.

An act may be prohibited by the State in certain circumstances, but it may be justified in others. Thus, an act may be an offence per se; but if the law justifies the act, or if the doer, under a mistake of fact, entertains a *bona fide* belief that the law justifies his action, then the act is deemed not to be

an offence under the Indian Penal Code.

Although the Petitioner may not reap the benefit of Section 5A of the Act of 1952, his act is protected by Art. 19 (1) (g) of the Constitution of India. Under the said Article, he enjoys the fundamental right to practice any profession. He has chosen the profession of acting as his calling. In law, then, he has every right to act in a film and to follow the conventions of its art. The dialogue spoken by him, as part of his role's obligation, reflects not his personal views; it is but an execution of the film's script. Hence, as an artist--as an actor-- he is justified in law to speak the said dialogue to fulfill his role. It is also not the case of the respondent Nos. 2 to 7 that the State has prohibited the display of the film under the Act of 1952, or that it falls under a reasonable restriction imposed under Art. 19 (6) of the Constitution of India. Therefore, the learned Magistrate should have extended the benefit of Section 79 of IPC to the petitioner.

While considering the application under Section 245 (2) of

the Code, the learned Magistrate has brushed aside the benefit of Section 79 of IPC. However, even at the initial stage, the learned Magistrate should have examined the grant of the said protection to the petitioner. In the case of Raj Kapoor v Laxman (*supra*) dealing with the benefit of Section 79 of IPC, the Hon'ble Supreme Court stated as under:

> Jurisprudentially viewed, an act may be an offence, definitionally (sic), speaking; but a forbidden may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by law or is bona fide believed by mistake of fact to be so justified. If, as here, the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition, the producer and connected agencies do enter the statutory harbour and are protected because of S. 79 exonerates them at least in view of their bona fide belief that the certificate is justificatory. Thus the trial court when it hears the case may be appropriately appraised of the certificate under the Act and, in the light of our observations, it fills the bill under S. 79 it is right for the court to discharge the accused, as the charge is groundless.

Although the above case dealt with "obscenity" in the film *Satyam, Sivam, Sundaram*, the principle it sits out is, if law

justifies the act or, the person, under a mistake of fact, believes himself to be justified by law in a bona fide manner, then the act is not an offence. Either the Constitution of India, or a statute may justify the action. In such a situation, the learned trial court should extend the benefit of Section 79 of IPC. However, in the present case the learned Magistrate has failed to give the benefit of Section 79 of IPC to the petitioner.

Another contention raised by the learned counsel is that Art. 19 (1) (a) of the Constitution guarantees the freedom of speech and expression. The persons involved in the production of the film, including the Petitioner, enjoy the fundamental right of speech and expression. In fact, creative art works, as a species, are the most prized forms of human speech and thought. Therefore, they need to be protected.

The Social Contract Theorists--Hobbes, Locke and Rousseau--tell us that Man entered into a social contract for creating a State. While living in Nature, Man enjoyed natural rights, which were self-evident and inalienable, such as the

right to liberty, equality and fraternity. Man sacrificed some of his other freedoms, in order to create a polity that would protect his inalienable rights. The constitution of India reflects this philosophy when it affirms: “We, the people of India” have given the Constitution to ourselves. Constitutional Law and the Criminal Law do not exist in separate compartments, unconnected with each other. In fact, the latter flows from the former. The Constitution is the *grundnorm* of all the laws. Therefore, while considering criminal offences, the Court is bound to take into account the Constitutional mandate. The Constitution, its spirit and its goals, may not be ignored by any court of law.

The Preamble of the Constitution of India proclaims “Liberty of thought, expression, belief, faith and worship”. Art. 19 (1) (a) further announces: “All citizens shall have the right to freedom of speech and expression.” Freedom of speech and expression is not only the hallmark of a democracy, it is its very life blood. Innumerable treatises and pamphlets have been written in its praise and defense; many battles have been

fought, claiming it as an inalienable human right. Its hymns have been composed by political thinkers from Thomas Jefferson to John Stuart Mill, from Thomas Paine to the Constituent Assembly in India. It is a cherished right of the people, and it is for the people. Of course, it is not an absolute right. But fundamental rights are the area where the State is prevented from treading. It is a clearance in middle of the jungle of State power. Under Part III of the Constitution of India, the citizen is granted a free arena where he/ she is protected from intrusions of the State. In fact, the State is duty bound to protect the fundamental rights, for if not State, then who?

The importance of the freedom of speech and expression has been recognized, not only by our Constitution; it has also been emphasized in international law. The Universal Declaration of Human Rights, 1948, for example (“the Declaration”, for short), and the International Convention on Civil and Political Rights, 1966 (“the Convention”, for short) also guarantee the freedom of speech and expression. Art. 1 of the Declaration states: “All human beings are born free and equal

in dignity and rights." Art. 2 of the Declaration states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty". Art. 19 of the Declaration boldly proclaims: "Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Similar provisions are also contained in the Convention. In an era of widespread insistence on Human Rights, this Court cannot forget that India is a signatory to the Declaration and the Convention alike. The Indian Judiciary is bound, as a consequence, to protect and promote the Human Rights. And freedom of speech is the most basic of the Human Rights, for

on it hinges the freedom, the dignity, and the well-being of the individual.

Undoubtedly, film is a form of art, albeit of modern art, whose patrons are, generally, large masses. Among those who make films, judge of films, or teach about films, there is a consensus that film is the art of the future, and that it has its own poetics by which its excellence is to be judged. The French critic Ronald Barthes's reputation, for example, rests upon his theory of semiotics, his discussion of how cinematic art manipulates images to make meaning and to evoke poetry even from the most sordid aspects of existence.

Now, film, an apt form for the entertainment of modern masses, comes into being with a complex collaboration of artistes of various skills: scriptwriters, actors, and musicians; dancers, costume designers, and make-up artists; cameraman, choreographers, and, above all, directors. Not only does it take art and imagination but also a vision of life to offer a slice of life, an understanding of experience, and a solution to the puzzles

that life tosses at the commonest of the common man. To be able to convey a powerful impression of life, and to be able to serve up some solutions to its entanglements, the artistes collaborating on a film have to be free to choose their angle, their tone, their language, their rhythm; their images, and symbols, their lights and shadows. Henry James, the “Master” novelist, well understood the conditions for the production of good art when he said: “The good health of an art which undertakes so immediately to reproduce life must demand that *it be perfectly free*.” Obviously, if we will have good music, we cannot tamper with the flute.

The one quality shared by all forms of art is the fluidity of their meaning. Their power lies in the very suggestiveness that distinguishes them from a cluster of slogans, or mere bald statements. Another distinguishing mark of a work of art is its terrible integrity. Various elements of a work of art combine to create but one, central meaning. And since its well-knit fabric is seamless, no one segment of a film can be taken in isolation and held forth as containing the whole meaning. A dialogue,

taken by itself, cannot be said to represent the intent and the meaning of the work, for it is but one element of the film. Indeed, all the elements of the work must be pondered over in succession before the intent and the meaning of the work can be abstracted from it. In a film, even the light and shadows, colours and musical cadences, contribute to its overall meaning. And as a film's life derives from an intricate complex of various elements, only a trained critic can be trusted to infer its meaning, or to form a judgment about its nature with some authority. The spontaneous reaction, therefore, of a couple of viewers can't well be treated as a serious assessment of what the film had intended to convey.

The Court cannot be blind to the fact that the original complaint entails the question of the freedom of the artist, which cannot be trifled with if only because so much social good depends on their freedom. For one thing, the poverty of Soviet literature, and the paucity of good works during the Chinese Cultural Revolution, the two utterly restrictive periods of two different societies, should be a sufficient warning that art

can’t flourish where the artist is silenced. Imaginative minds and their robust works, thrive upon freedom.

What is pertinent here is the fact that, in a world confused and torn by factions, the artist’s is the most articulate and independent voice, one necessary to be kept alive in our difficult or changing times. When the pressure for conformity is greater, the more jealously should be guarded the independence of the artists. For in their absence, masses tend to become dupes of tyrants, demagogues, or zealots. John Stuart Mill, in his classic essay “On Liberty” (1859), astutely observed that “the liberty of the press is one of the securities against corrupt or tyrannical government.” And so is the liberty of the artist—precious and beneficial as much to the society as to the artist. This Court agrees with Mill’s opinion: “The peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generations.” A work of art, like the Keatsian “thing of Beauty,” is forever. To meddle with it, is to deprive generations of a piece of history and of a thing of joy and enlightenment.

Works of art, social and political histories tell us, do not always flatter their contemporaries; on the contrary, they often critique the present. Their criticism, however, is such a wholesome aspect that they should be cultivated just for their critical insights, for criticism is necessary to keep the society from going stagnant. Tulsidas, the composer of the *Ramayana*, so well understood the value of a candid critic that he asserted in a quartet that “finding a fearless critic, one should lodge him at home, for then would he keep the host virtuous.” John Milton, arguing “for the Liberty of Unlicensed Printing,” spoke to “the Parliament of England” in 1644. In his famous address, known as “Aeropagitica” ever since, he defended the privilege of the press, a public medium like the present-day film, to engage in unfettered criticism. “The knowledge and survey of vice is in this world so necessary to the constituting of human virtue.” That is, parody and criticism of social institutions is necessary to keep the society in a healthy state. All those who wish well by this Republic shall gladly permit a critique of its institutions and of its worthy professions.

Howsoever great the temptation to punish those who say unflattering things, wisdom counsels us against that step. Sir Francis Bacon, the Chancellor of Exchequer and a man of affairs, well understood the folly of censoring one's critics. He came to the conclusion: "The punishing of wits enhances their authority, and a forbidden writing is thought to be a certain spark of truth that flies up in the faces of them who seek to tread it out." Silencing a critic, one has to agree, merely strengthens the critic. On the other hand, if what he says is true, everyone benefits from his criticism; and if what he utters is a lie, it soon fades away in the light of facts.

It is because of the long-term benefits that great artistes and directors confer upon the people that they have been historically singled out for great honors. In our own time, V. Shanta Ram, Guru Dutt, and K. A Abbas, Aparna Sen and Satyajit Ray have, like Ingrid Bergman and the New Wave French and Spanish directors—Godard, Truffaut, and Bunuel—been bold experimenters and unconventional directors. Even

while they revised their contemporaries' outlook through their filmic art, they enriched the lives of millions of viewers of the post-War generations, forcing them to think anew, to question the familiar, and to expect the unexpected. Contemporary generations, the children of world crises or of national emergencies, would have been lost without help from the cinematic interpretations of modern experience. Not surprisingly, their respective societies not only granted the film artistes an experimental freedom, but also applauded the boldness of their vision. All societies have held great directors and actors in high regard and richly honored them. That is because no society that aspires to greatness can tamper with the freedom of the artist. Cervantes, Shakespeare, Gogol, Melville, Faulkner, and Kafka, Nirula, Pant and Premchand, all mounted attacks on the practices and institutions of their respective societies. But they were embraced, not exiled; were admired, not indicted, by their people. In the view of this Court, it is imperative to protect and promote the arts and the artists, for they enrich and strengthen our culture.

The learned counsel for the respondents Nos. 2 to 7 has heavily relied upon Art. 19 (2) of the Constitution of India to argue that reasonable restrictions can be imposed upon the freedom of speech and expression, especially for enacting laws dealing with defamation. Reasonable restrictions are certainly permissible under Art. 19 (2) of the Constitution of India. In fact, under the said Article, besides defamation, the State has the power to prescribe reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to the contempt of court, or incitement to an offence. But such a power has to be interpreted narrowly, so as to keep the State at bay. In case the terms contained in Art. 19 (2) were interpreted liberally, the State would be granted a powerful tool to trample on the fundamental rights of the people. The terms, wisdom would caution, need to be cribbed, cabined and confined to a small compass. The term “defamation”, naturally, has to be interpreted in the same manner as prescribed by the criminal or civil law. The dimensions of the terms have already been discussed above.

As the present case does not neatly square up with defamation as defined under Section 499 IPC, the argument of the learned counsel for the respondents Nos. 2 to 7 on the basis of Art. 19 (2) of the Constitution is found to be without force.

According to the learned counsel for the respondents Nos. 2 to 7, the complainants had submitted neither the script of the movie nor a visual recording of the film. Thus, the complainants failed to establish the background of the dialogue alleged to be defamatory. In the absence of such crucial evidence, it is rather surprising that the learned trial court had proceeded not only to take the cognizance, but also to reject the application under Section 245 (2) of the Code.

This Court has had an opportunity to read the script, which was submitted by the learned counsel for the Petitioner. The story line there is a simple one: the moment the child is born, the parents dump him on a trash heap. A *sadhu* (a holy person) brings up the child as an orphan. One day, the child asks the *sadhu* as to what his (the child's) name is. The Sadhu

replies, “Ram Jaane” (God alone knows). That is how the hero, played by the Petitioner, acquires the name “Ram Jaane.” The child, brought up in the alleys of Mumbai, is attracted by the wealth displayed by the underworld dons. Therefore, he decides to join the underworld. He rises, and he falls, in his career. He is brutalized by the police; he goes in and out of jails. In the course of his rise in the underworld, Ram Jane kills three persons, namely a property dealer, a don, and his own partner in the underworld business. He is tried for the three murders. It is during the course of his trial, at the moment the defense counsel gets up to defend Ram Jane, that the Petitioner speaks out the dialogue purportedly offensive. His outburst is caused, not only by his anger, but also by his desire to confess before the court.

A detached reading of the script clearly reveals that the story is about a frustrated person, who has run after money and power, but finds himself without either of them. In his quest for these two, he lost his childhood friend and his childhood girlfriend. Instead of blaming himself, he blames the world at

large. At the end of the movie, he mocks at the people's greed for money and power, including his own. He reminds the audience that in case the poor, the orphaned, the oppressed are not continually ignored, they might destroy the ordered society. Thus, while he questions the greed of the people, he also gives a message to the audience to take care of the unfortunates of the world.

An open reading of the script clearly establishes that neither the theme of *Ram Jaane*, nor its plot, is geared to parody the legal profession. It is a commonplace in the criticism of fiction that plot is the surest index of the work's meaning. There is little in this film to suggest that it was composed merely to parody the legal profession lock, stock, and barrel. And the intention that is not integral to the work can't, by any honest critic, be imposed upon it. One can't do better, in this context, than to cite the Nobel laureate T.S. Eliot, a celebrated modernist poet and critic, who, in his essay "Tradition and the Individual Talent" (1919), clearly enunciated a healthy critical principle: "Honest criticism and sensitive appreciation are

directed not upon the poet but upon the poetry." An honest criticism of the film should deal, then, with the product--that is, the film--not with directors or actors, the composers of the artwork.

A dispassionate review of the film does not, in the view of this Court, suggest that the legal profession is its main concern or its center piece, or that it is made with a malicious intent to malign, defame, or tarnish the legal profession which, as must be well known to the contemporary audience, gave modern India its first crop of the sterling leaders. In fairness, it must be added that the process of the criminalization of the marginalized of the Indian society is the burden of this film; and the portrayal of powerful people's indifference to the orphans' fate, or interests, is the chosen means of its social protest. Symbolically, orphans represent the people who are nobody's favorite wards, just the human surplus that can be disposed off with impunity. In the impassioned drama of the film, every agent of society--the dons of the underworld, the police, the judiciary--comes off as a cog in the wheel of the system indifferent to the

fate of the unfortunate. Its critique is general which, broadly, lays the responsibility of the social wretchedness upon the society as a whole. Clearly, *Ram Jaane* is no more defamatory of the legal profession than Charles Dickens's *Bleak House* (1857) was defamatory of the barristers who argue a case of inheritance for generations till there is nothing left for the inheritors, all inheritance having gone to the learned barristers. Dickens's fiction rendered the callousness of the mid-nineteenth-century English society, and not an indictment of the Chancery, a division of the British High Court, where the case was pleaded over generations. Dickens's novel is a report on the British social system, not a burlesque of a profession. Naturally, in the 150 years that the novel has been in vogue, no barrister has thought of suing either the Dickens's estate or the publishers who continue to print and distribute the novel that has done more to reform the judiciary than many an act of the Parliament.

Considered against the background of the story's plot, the offending dialogue does not come off as defamatory. It is not, in

essence, criticism of even the legal fraternity. It is firstly an outburst of a frustrated man against the society whom he has failed to master and control. Secondly, it is a sign of his revolt against every symbol of authority. Thirdly, it is portrayal of a misguided youth. Fourthly, the character warns us about neglecting the misguided, the lost youth who has grown up on the footpaths and alleyways. Hence, it is a plea to take for their care and guidance, before the lost youth turns their ire on the society at large. Seen in its proper perspective, the dialogue is almost essential to the story pervaded with reformatory instinct. Hence, by no sleight of hand can the Protagonist's utterance of the dialogue be extricated from its fictional frame and branded a defamatory rhetoric.

For the reasons stated above, we quash and set aside the order dated 29-4-1998. And, as the continuation of the criminal proceeding would decidedly amount to an abuse of the law and of the court, we further quash the criminal proceeding pending before the Additional Civil Judge (Sr. Division) and Additional Chief Judicial Magistrate, No. 1, Kota in the form of

Criminal Case No. 98/1996, Mohammad Akram & Ors v Rajiv Mehra & Ors, qua the petitioner.

(R.S. CHAUHAN) J.